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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, ET AL.,

Debtor.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 22, 2013

3:51 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

1
2 In-Person Status Conference re: Motion of the Ad Hoc Group of
3 Junior Secured Noteholders, for an Order Directing Each of
4 Debtors' Counsel to Remain Neutral in Any Dispute re: Claims,
5 etc.
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1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. Residential
3 Capital, number 12-12020. Mr. Lee?

4 MR. LEE: Good afternoon, Your Honor. Thank you for
5 seeing us on such short notice.

6 THE COURT: Sorry I'm running behind today.

7 MR. LEE: We'll be very brief. One of the advantages
8 of bringing everybody down to court, Your Honor, and doing
9 things on the record is -- it's remarkable how many things you
10 can achieve outside in the hallway.

11 Just briefly, Your Honor, what we wanted to discuss
12 today was the timing of the ad hoc bondholders' motion to
13 require plan neutrality on intercompany claims. That hearing
14 is set for August the 21st, which is the same date as the
15 disclosure-statement hearing, which creates problems in and of
16 itself.

17 What we were hoping, Your Honor, and I've discussed
18 this with Mr. Shore who's counsel to the ad hoc group, is that
19 Your Honor set an accelerated briefing schedule and hearing on
20 the motion. There are a number of different reasons why it
21 makes sense, from the estate's perspective, to accelerate the
22 briefing hearing and obviously a resolution of this issue
23 surrounding a proposed mediation session on July the 30th, and
24 various other things. And we think it would be better for
25 everybody if we can get this issue briefed, heard and resolved

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1 as soon as we can.

2 THE COURT: You don't want to conduct a mediation, the
3 central issue that you can't discuss?

4 MR. LEE: That would have been one of the two issues
5 that I would have gone into in some detail but for the fact
6 that Mr. Shore was prepared to accept an accelerated schedule,
7 Your Honor.

8 THE COURT: All right, so tell me what the proposed
9 schedule is.

10 MR. LEE: Your Honor, the proposed schedule would have
11 the debtors filing their responsive papers this Friday, and I'm
12 assuming the commit --

13 THE COURT: I assume that's also the committee,
14 because they're also saying disqualify the committee.

15 MR. LEE: And the committee as well and any other
16 interested party.

17 If the ad hoc noteholders want to file any responsive
18 papers, I would assume that would have to be on Monday. I'm
19 not sure if there are any additional papers they'll need to
20 file. And then we would have, Your Honor, a hearing on Tuesday
21 morning, if that was acceptable to Your Honor.

22 (Pause)

23 THE COURT: That's interesting, because on Tuesday
24 morning I have a hearing in JMK Construction, a matter that
25 fits prominently into the motion papers that were filed.

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1 (Pause)

2 THE COURT: All right, I want any responsive -- any
3 objections to the motion, by Friday the 26th at noon. We have
4 a ResCap calendar in the morning. We'll set the hearing on the
5 motion, for Tuesday the 30th at 10 o'clock.

6 Let me just see --

7 (Pause)

8 THE COURT: JMK is a status conference at 11; and if
9 we're not finished with the argument in this, I'll take JMK at
10 11 and then we'll resume the hearing on the motion as soon
11 as -- I don't think that'll be particularly long, but I'll take
12 them at the time that they're already scheduled, 11 o'clock.
13 So we'll start at 10 and then, if necessary, resume the
14 arguments on this motion.

15 Mr. Shore, you want to be heard?

16 MR. SHORE: Chris Shore from White & Case, on behalf
17 of the ad hoc group. Just two things: At what time on Monday
18 would it be helpful for you to get the papers, recognizing I
19 got to just get people to sign off on pleadings?

20 THE COURT: No later than noon. I need time to be --
21 I'm not particularly happy having to deal with this. I leave
22 on vacation on July 31; I am unreachable, I think, for most of
23 the time that I'm away. This is a serious issue; I take it
24 seriously. You may not get a ruling before I leave; we'll see;
25 I don't know.

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1 MR. SHORE: I'd also like to say Mr. Lee and I started
2 discussions yesterday, both about scheduling and also about the
3 possibility of trying to resolve this; I've spoken to
4 Mr. Eckstein this mor -- or this afternoon, about that. We're
5 going to have some discussions over the week and we'll see if
6 we can come to some sort of agreed resolution as to what the
7 ground rules are, and we'll let you know as soon as possible --

8 THE COURT: Let me know as soon as possible --

9 MR. SHORE: -- if we're able to do that. Okay.

10 THE COURT: I read the motion. I haven't seen what
11 the opposition is. I mean, I take the issue seriously. But to
12 give you all some focus for the objection and reply, I ask
13 myself the obvious questions. What, there's fifty-one debtors
14 here? You need fifty-one sets of counsel because nobody can
15 speak for the debtor? Mr. Kruger, who's the CRO, with
16 acknowledged fiduciary obligation to all of the debtors -- I
17 mean, if -- and it may be -- what I've made clear at the time
18 of the PSA hearing on this -- the focus on the 9019 for the
19 settlement is -- look, I don't know whether the settlement's
20 going to get approved or not; if it doesn't, the plan doesn't
21 get confirmed.

22 But I'm struggling, Mr. Shore, with the notion that
23 the CRO, as a fiduciary of the debtors, in the context of all
24 of the claims being asserted in every different direction,
25 can't make an assessment consistent with his fiduciary duties.

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1 Yet here's the landscape; here are the claims. On the issue of
2 valuing intercompany claims at zero, there are substantial
3 arguments that have been made that some of the claims should be
4 rechar -- some or all of them should be recharacterized as
5 equity; some or all would be subject to equitable
6 subordination. I don't know whether those arguments are good
7 or not. But the proponents of the settlement are going to have
8 the burden of showing that they've satisfied the 9019
9 standards.

10 And the import of your motion, by saying "debtor and
11 committee neutrality", is that Mr. Kruger, as the CRO, with
12 acknowledged fiduciary obligation to all of the debtors, can't
13 reach the judgment that this proposed settlement is in the best
14 interest of all of the debtors and all of their separate
15 estates and is appropriate resolution of the issue.

16 So when you say that Debtors' counsel and the
17 committee's counsel are to be -- remain strictly neutral in any
18 dispute, and limited disqualification of each, I'm struggling.
19 Obviously, in a different context, as JMK is in a different
20 context, objections at the time of retention -- I don't back
21 off from anything I said in the JMK opinion. Judge Bernstein,
22 in Granite -- it's a different context. Here we are with
23 thirteen, fourteen, fifteen months into the case, and your
24 constituency may be the only one who's arguing that, 'No, the
25 debtor' -- 'Debtors' counsel, the committee's counsel, the CRO,

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1 have to remain neutral; they can't take a position.' I don't
2 know whether there's any other constituency in this case
3 asserting such a position.

4 It doesn't mean you're wrong, at all; I want to make
5 that clear. It's a serious issue, but raised in this
6 context -- I'm sure you will address, at the time of
7 confirmation, whether this proposed settlement is fair,
8 reasonable and in the best interests of the estates, whether
9 Mr. Kruger appropriately has exercised his business judgment,
10 consistent with this fiduciary duty to all of the debtors, in
11 agreeing to enter into a settlement with these provisions.
12 That's what I'm -- I've only read your papers, but I haven't
13 seen the other papers. It's a serious issue.

14 I certainly was aware earlier about what transpired in
15 Adelphia. I respect Judge Gerber's views, but every case is
16 different. And I'm not so sure I buy into -- I have no doubt
17 that the issue will be fully and fairly and strongly vetted
18 with evidence and argument if it proceeds to confirmation with
19 the debtor and the committee, as co-proponents of a plan,
20 arguing forcefully for why the Court should approve the 9019,
21 and you arguing just as forcefully that it shouldn't be
22 approved.

23 Anyway, I mean, that's -- you'll have a chance to file
24 the reply. The committee and the debtor are going to have a
25 chance to file their objection. If possible, do a single

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13

1 brief; that would be really helpful; but if not -- I mean, I
2 just --

3 MR. SHORE: We will focus our reply on addressing Your
4 Honor's concerns. We're not arguing for fifty-one fiduciaries.
5 We'll try to resolve this week what, at least, the areas of the
6 dispute are, and ways in which we think that this can proceed
7 without a wholesale change in management or anything else,
8 allowing people to form views that -- I think the distinction
9 is going to be between forming views and acting on views, and
10 we'll focus on that.

11 THE COURT: Well, "we'll see" is right. Let me say
12 that -- hang on. Just want to look at Friday's agenda.

13 Let me ask now: Were you able to work out -- one of
14 the things you were going to try and work out before Friday,
15 Mr. Shore, was your request to bring supplemental or new
16 claims --

17 MR. SHORE: I'm getting the counterclaims to them
18 tonight. So we don't have a resolution of it yet but, again,
19 I'm hopeful we will.

20 (Pause)

21 THE COURT: Okay, I haven't looked yet at the -- you
22 have, on shortened notice, the order in aid of the mediation,
23 and I haven't looked at it yet.

24 MR. LEE: Yeah, Your Honor, first of all, obviously we
25 want to -- I understand the discomfort in having to resolve

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14

1 this just before the break.

2 THE COURT: Don't count on it being resolved before I
3 go away, Mr. Lee.

4 MR. LEE: The -- there were really -- there are some
5 concerns, Your Honor; I think you hit the nail on the head on
6 one of them, which is, going into a mediation and effectively
7 how do you, when you're required to take no position with
8 respect to an issue, mix compromise --

9 THE COURT: Well, unless and until I rule that you can
10 take no position on an issue, there's no order that prevents
11 you from taking a position on an issue; let me make that
12 crystal clear to everybody. So unless and until you get a
13 ruling from me to the contrary, business as usual.

14 MR. LEE: Okay, that's very helpful, Your Honor.
15 Thank you.

16 THE COURT: Whether you all reach a resolution of
17 these issues in mediation, God willing. We'll see. If not,
18 we'll just proceed. But I -- look, I take this issue that the
19 ad hoc committee has raised -- I take the issue seriously, and
20 I'm sure you'll make a serious response to it. And I just --
21 all I've read is the one side's papers. It's not an easy issue
22 from the Court's standpoint. Maybe you'll convince me it is an
23 easy issue.

24 MR. LEE: We hope to do that, Your Honor.

25 THE COURT: Do you know yet how much of the rest of

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1 the stuff that's on for Friday is actually going forward? Does
2 anybody know?

3 MR. LEE: Your Honor, I believe that the argument on
4 OID is going forward. I think that, beyond that, everything
5 else is largely uncontested in the morning. I think the FRB
6 motion -- there is one reservation of rights and one borrower
7 objection, which I'm not sure we're going to be able to
8 resolve.

9 THE COURT: Okay. All right. See you on Friday.

10 MR. SHORE: Okay, thank you, Your Honor.

11 THE COURT: We're adjourned.

12 (Whereupon these proceedings were concluded at 4:08 PM)

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Any objections to motion of the ad hoc group

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of junior secured noteholders, for an order

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directing each of debtors' counsel to remain

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neutral in any dispute re: claims, etc., are

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due by Friday, July 26th at 12 p.m.

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Hearing on said motion of the ad hoc group of

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junior secured noteholders, accelerated to

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Tuesday, July 30th at 10:00 a.m.

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C E R T I F I C A T I O N

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I, David Rutt, certify that the foregoing transcript is a true
and accurate record of the proceedings.

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Date: July 23, 2013

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